

Exhibit M

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

v.

05 Cr. 621 (KMK)

ALBERTO VILAR
GARY TANAKA,

Hearing

Defendant.

-----X

New York, N.Y.
August 9, 2006
9:45 a.m.

Before:

KENNETH M. KARAS

District Judge

MICHAEL J. GARCIA
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Southern District of New York
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New York, N.Y. 10007
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(Hearing resumed)

THE DEPUTY CLERK: All rise.

MS. MCEVOY: May I proceed, your Honor?

THE COURT: You may. The record will note that
everyone everybody is now here Mr. Kobre was standing up to
reaffirm that.

MR. HOFFMAN: Good morning, your Honor. Thank you. I
apologize.

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22 THE COURT: Of course she has. She looked at them
23 yesterday. Let's get to the punch line. We have been doing
24 this for an hour.

25 MS. HOFFMAN: This is the end.
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6896TAN2 Fraterrigo - recross

1 Q. Do you remember seeing some information in the MLAT request
2 talking about eight victims who had invested \$30 million?

3 MS. MCEVOY: Objection, beyond the scope.

4 THE COURT: It is beyond the scope. Sustained.

5 MS. HOFFMAN: I have no further questions.

6 THE COURT: How long do you have, Mr. Kobre? It is
7 roughly time for our mid-morning break, unless you will be five
8 or 10 minutes.

9 MR. KOBRE: I think we should take a break. I think I
10 will be less than 20 minutes.

11 THE COURT: I have a 12:30 meeting that I can't get
12 out of. Our lunch break will be about an hour and a half that
13 is why I want to take a break now. Let's take a break and we
14 will finish up with the cross. Let's take 10 minutes.

15 (Recess)

16 RE-CROSS-EXAMINATION

17 BY MR. KOBRE:

18 Q. Ms. Fraterrigo, you testified on redirect examination to
19 the fact that you had a conversation with the government
20 yesterday prior to the commencements of your redirect, correct?

21 A. Yes.

22 Q. How long was that conversation?

23 A. I believe it was 10 -- 10 minutes, 15 minutes.

24 Q. Who was present?

25 A. The assistance Deirdre McEvoy, Marc Litt and also Bill

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1 Johnson.

2 Q. And then you said there was another conversation last night
3 for about an hour and a half?

4 A. Yes.

5 Q. Who was present during that conversation?

6 A. Deirdre McEvoy and Marc Litt.

7 Q. Was there any one else there besides these assistants
8 assigned to this case?

9 A. Yes.

10 Q. One of the things that Ms. McEvoy asked you was the
11 questions she was going to ask you today?

12 A. I don't think she specifically said she was going to ask me
13 specific questions.

14 Q. How about general, did she tell you what she was going to
15 discuss?

16 A. Yes. I think she just mentioned some things.

17 Q. I take it as a given that you understand that you have an
18 obligation in this hearing to testify truthfully, correct?

19 A. Yes.

20 Q. Earlier do you recall testifying today that in your view
21 reason to be concerned is equivalent to the same thing as
22 probable cause, do you recall saying that this morning?

23 A. Yes.

24 Q. That statement that you just made is patently false, isn't
25 it?

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- 1 A. No.
2 Q. Untrue?
3 A. No.
4 Q. Do you recall testifying on July 10 in this hearing?
5 A. Yes.
6 Q. Do you recall being asked the following questions about the
7 exact same subject matter and giving the following answers --
8 this is a question -- this is on cross-examination, I believe,
9 by Mr. Hoffman, July 10, page 18, line seven.
10 "Q. You understood when you signed this sworn affidavit, did
11 you not, that there is a significant difference between the
12 standard described here quote, unquote reason to be concerned
13 as opposed to much higher standard probable cause?
14 "A. That is correct.
15 "Q. So you knew that the reason you used the term reason to be
16 concerned that other investors are likewise being victimized by
17 Vilar and Tanaka was because you didn't have probable cause to
18 believe that other victims -- excuse me -- that other investors
19 were being likewise victimized by Vilar and Tanaka, correct?
20 "A. I felt this was a reason to be concerned as it is worded in
21 the affidavit.
22 "Q. Had you had probable cause to believe that other investors
23 were being victimized had you -- had you had information that
24 went to that higher level then you would have used that term if
25 you had it, correct?

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- 1 "A. Correct."
2 Isn't it the case that just on July 10 you recognized
3 the fact that there is a difference between reason to be
4 concerned and probable cause?
5 A. Yes. I think what it is that in my affidavit there are
6 certain statements that I made that are not -- probable cause
7 and reason to be concerned are interchangeable. That is what I
8 understand. What the series of questions from Mr. Hoffman was
9 specifically naming particular items that were in the
10 affidavit. He was asking me about particular items that were
11 in the affidavit.
12 Q. Ms. Fraterrigo, the question that he asked you: "You
13 understood when you signed this sworn affidavit, did you not,
14 there is a significant difference between the standard
15 described here reason to be concerned as opposed to much higher
16 standard probable cause?" And you answered, "Yes, that's
17 correct." Are you saying that answer you gave is not right, is
18 not accurate?
19 A. I -- I am not saying it is not accurate. I am just saying
20 I didn't clarify it and I clarified it yesterday and I
21 clarified it today.
22 Q. And your testimony is this morning when you actually
23 testified on redirect examination in questions from Mr. McEvoy
24 that reason to be concerned in your mind was equivalent to
25 probable cause, your testimony is that is somehow consistent

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- 1 with your testimony on July 10?
2 MS. MCEVOY: I don't believe she testified to that on
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3 redirect.

4 THE COURT: It was on recross.

5 MR. KOBRE: I am sorry.

6 A. Yes.

7 Q. Those two testimonies are consistent, is that what your
8 testimony is?

9 A. With what?

10 Q. From July 10 and what you said this morning?

11 A. From what I said this morning is that reason to believe and
12 probable cause, that is what caused the confusion with my
13 testimony with Mr. Hoffman. He was asking me about particular
14 items that were in the affidavit and asking me to identify
15 where specifically was in the affidavit. If there was a fact
16 or a statement, where is it. And I told him it wasn't
17 specifically mentioned in the statement. I told him there was
18 reason to believe probable cause, reason to be concerned that
19 there are other investors being defraud.

20 Q. The last question and I will move on from this topic. My
21 recollection is -- I confess I don't have the written record.
22 My recollection is you were asked about two different things
23 this morning about reason to believe and you were also asked
24 specifically about reason to be concerned. In the context of
25 reason to be concerned, your answer was in your mind it was the

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1 equivalent of probable cause?

2 A. Yes.

3 Q. Is that the position you are taking here at this time, is
4 that in your mind reason to be concerned and probable cause are
5 equivalent?

6 A. Yes.

7 Q. You also testified this morning about there being a
8 negative cash balance. Do you recall that testimony?

9 A. Yes.

10 Q. And you said that was one of the reasons that led to your
11 belief there was probable cause?

12 A. It was one of the inferences. I think it was in the
13 complaints.

14 Q. It wasn't in the affidavit, correct?

15 A. I don't believe -- I can't recall right now. I think it
16 was in the complaints.

17 Q. You also recall testifying this morning that the two
18 victims in this case were personal friends -- I think what you
19 said "of theirs" -- meaning the defendants, I assume?

20 A. Yes.

21 Q. Isn't it correct that there was no evidence that the two
22 victims were personal friends of Mr. Tanaka?

23 MS. MCEVOY: Objection, scope.

24 THE COURT: Overruled. Go ahead.

25 A. My understanding they were personal friends of both. They

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1 had a closer relationship with Vilar but they knew both Gary
2 Tanaka and Mr. Vilar.

3 Q. They knew them, is that right?

4 A. They had a friendship, yes.

5 Q. Do you recall whether the affidavit in this case alleges
6 that both of the investors or victims in this case as alleged
7 were friends with Mr. Tanaka?